



Western States Petroleum Association  
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**VIA ELECTRONIC MAIL**

December 3, 2004

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California Integrated Waste  
Management Board  
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Mr. Dmitri Smith  
California Integrated Waste  
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**Subject: Preliminary Comments of the Western States Petroleum Association regarding the Definition of "Precautionary Approach" for Cal/EPA's EJ Action Plan Implementation.**

Dear Mr. Hall and Mr. Smith:

The Western States Petroleum Association (WSPA) is a trade group representing nearly 30 companies that explore, develop, refine, market and transport petroleum and petroleum products in the Western U.S. Our companies market products and have extensive facilities in California including oil production, pipelines, marketing terminals, refineries and retail gasoline outlets. Hence, WSPA is very interested in the programs, plans, and decisions made by the Cal/EPA and its Boards, Departments and Offices. Following are WSPA comments regarding the definition of "precautionary approaches" or "precautionary approach" under Cal/EPA's Environmental Justice Action Plan (the "EJ Action Plan"). First we would like to state that WSPA supports the comments recently submitted by the California Council for Environmental and Economic Balance. In addition, we urge you to consider the following as you move to define these very important terms in the Cal/EPA EJ Action Plan:

1) As we have commented in many venues across the many regulatory actions that Cal/EPA's BDOs undertake, we believe that the BDOs already use a precautionary approach in many of their programs. We should note that the Cal/EPA's Advisory Committee on Environmental Justice also recognized that BDOs already do use a precautionary approach.

2) WSPA believes that environmental justice programs should use clearly defined terms. Clear terms allow Cal/EPA and stakeholder groups to have a common understanding of agency environmental justice policies. Using these guidelines, we suggest that Cal/EPA employ the following definition for “precautionary approach”: ***“Precautionary approach” means the application of judicious and responsible decision making based on best available science and on the weighing of the level of scientific uncertainty and the potential risk of damage. A precautionary approach is based on the recognition that the absence of full scientific certainty shall not be used as a reason for postponing decisions where there is a risk of serious or irreversible harm.***” This statement is based on language from the document that Cal/EPA has referenced in the recent workshops from the U.S. Commission on Ocean Policy and the Canadian document entitled A Framework for the Application of Precaution in Science-Based Decision Making About Risk.

3) In addition to establishing a reasonable definition of “precautionary approach” it is equally important to establish guidelines to ensure that the Action Plan will be implemented in a rational, objective fashion. We understand that Cal/EPA is developing the definition at this time and plans to develop guidelines at a later date; however, we thought it would be constructive to offer some initial suggestions regarding the guidelines:

- The criteria for triggering the precautionary approach should be clear and science-based. For example, mere speculation about potential harm should **not** trigger review under the precautionary approach.
- Once review under the precautionary approach is triggered, the first level of decision is whether agency action is needed.
- If action is needed, the appropriate action will depend on the level of scientific uncertainty about the potential risk of damage. The action should be targeted at the sources of the risk in an equitable fashion.
- If agency action is needed, the appropriate action can be selected from a range of actions depending on the level of scientific uncertainty and the potential risk of damage. Such actions may include: 1) information and guidance; 2) public awareness/ involvement/education campaigns, 3) research, monitoring or further data collection; 4) incentive programs; 5) command and control regulations; and 6) risk reduction programs including the selection of pollution prevention practices by businesses, etc.
- The process should be transparent.
- The precautionary approach should take into account the **benefits** of the activity or project in determining the appropriate action.
- Required measures should be reasonably feasible, cost-effective and equitable.
- The process should recognize that it is impossible to prove a negative (i.e., the complete absence of health risk).
- Fair and consistent application is important.
- Environmental program decisions have impacts beyond environmental protection. While protecting public health and the environment, Cal/EPA needs to avoid decisions that harm the business climate and the retention and creation of

jobs. (A strong economy and the jobs that come with it are good for public health.)

4) We believe that it is a generally recognized fact that Cal/EPA's existing programs have been very successful in improving environmental protection, therefore we urge that Cal/EPA continue its effective path of ***focusing on documented environmental problems.***

5) Finally, as the BDOs identify potential gaps in current precautionary programs and take steps to address those gaps, ***it is critical that the agencies be cognizant of the benefits of the product or operation involved and potential impacts on business climate and job creation and retention.***

We look forward to continued discussions with Cal/EPA and CIWMB staff and other stakeholders on these issues. If you have any questions, or if you would like to discuss the comments, please contact me at 916-498-7752.

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine Reheis-Boyd". The signature is fluid and cursive, with the first name "Catherine" and last name "Boyd" being more legible than the middle name "Reheis".

Catherine Reheis-Boyd  
Chief Operating Officer and Chief of Staff

Via Electronic Mail

cc: The Honorable Terry Tamminen  
The Honorable James Branham  
Ms. Tam Doduc